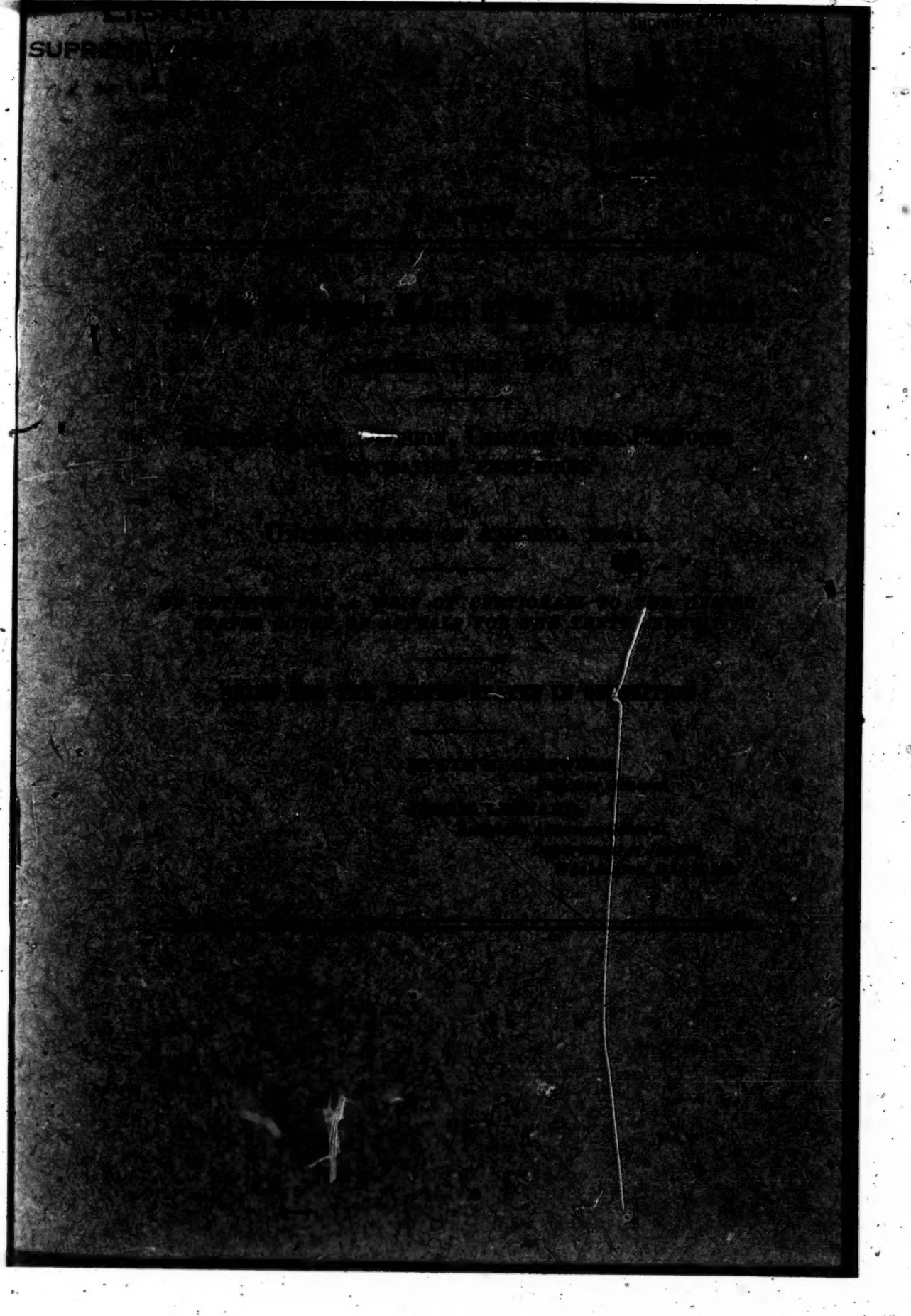

In the Supreme Court of the United States

OCTOBER TERM, 1970

No. 466

GUSTIN-BACON DIVISION, CERTAIN-TEED PRODUCTS CORPORATION, PETITIONER

v.

UNITED STATES OF AMERICA, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The order of the district court granting petitioner's motion for a more definite statement (Pet. App. 1A) is reported at 302 F. Supp. 759 (D. Kan.). The order of the district court denying the motion of the United States to certify questions under 28 U.S.C. 1292(b) and dismissing the action (Pet. App. 2A) is not reported. The opinion of the court of appeals (Pet. App. 6A–13A) is not yet reported.

JURISDICTION

The judgment of the court of appeals was entered on April 30, 1970. The petition for a writ of certiorari was filed on July 29, 1970. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

402-883—70

QUESTION PRESENTED

Whether complaints filed by the Attorney General under Section 707(a) of the Civil Rights Act of 1964, 42 U.S.C. 2000e-6(a), must plead facts in greater detail and with more specificity than is required of other complaints by the notice pleading concept embodied in Rule 8 of the Federal Rules of Civil Procedure.

STATUTES AND RULES INVOLVED

Section 707(a) of the Civil Rights Act of 1964, 42 U.S.C. 2000e-6(a), provides in pertinent part:

> (a) Whenever the Attorney General has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of [denying persons the rights guaranteed them under this statute] * * *, and that the pattern [or] practice is of such a nature and is intended to deny the full exercise of the rights herein described, the Attorney General may bring a civil action in the appropriate district court of the United States by filing with it a complaint * * * (2) setting forth facts pertaining to such pattern or practice * * *

Fed. R. Civ. P. 8(a) provides in pertinent part:

> A pleading which sets forth a claim for relief * * * shall contain * * * (2) a short and plain statement of the claim showing that the pleader is entitled to relief * * *

Fed. R. Civ. P. 8(e) provides in pertinent part:

> (1) Each averment of a pleading shall be simple, concise, and direct. No technical forms of pleading or motions are required.

Fed. R. Civ. P. 12(e) provides in pertinent part:

> If a pleading * * * is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, he may move for a more definite statement before interposing his responsive pleading. The motion shall point out the defects complained of and the details desired. * * *

STATEMENT

This action was commenced on April 24, 1969, by the filing of a complaint under the equal employment opportunities provision of the Civil Rights Act of 1964 (42 U.S.C. 2000e *et seq.*) against Gustin-Bacon Division of Certain-Teed Products Corporation (the company) and Local 41 of the International Brotherhood of Teamsters (the union), alleging that the company was engaged in a pattern or practice of discrimination against Negroes and other nonwhites on account of their race in the operation of its Kansas City, Kansas plant and that the collective bargaining agreement perpetuated the effects of past discrimination. (Pet. 4-5). In addition to identifying the nature and jurisdictional basis of the suit and the parties, the complaint alleged the following specific discriminatory practices: (1) racially discriminatory hiring; (2) racially discriminatory job assignments; (3) racially discriminatory administration and grading of personnel tests; and (4) racially discriminatory promotion to supervisory positions.

Although the union defendant filed an answer in response to the complaint, the company filed a motion

under Rule 12, Fed. R. Civ. P., for a more definite statement, seeking the names of the victims and beneficiaries of the alleged discrimination, the dates on which the discriminatory acts occurred, and other factual details (Pet. 6–7). The district court granted the motion, on the theory that the statutory language of Section 707(a) of the Act (42 U.S.C. 2000e–6(a)), calling upon the Attorney General to set forth "facts pertaining to the pattern or practice" of discrimination, imposed a duty to plead facts in detail and with particularity. In so holding, the district court concluded that Section 707(a) superseded and imposed a greater pleading burden than Rule 8 of the Federal Rules of Civil Procedure. When the United States declined to amend, the district court entered an order dismissing the complaint and the government appealed.

The court of appeals reversed, holding that neither the language of Section 707(a) nor its legislative history suggested any intent to supersede, or to supplement, the pleading standards specified in Rule 8. The court held that the statute merely "meant that the Attorney General's belief that a pattern or practice of racial discrimination in employment exists, must be reflected on the face of the complaint" in accordance with the ordinary pleading standards of Rule 8 (Pet. App. A12). It ruled that, so judged, the complaint

was clearly sufficient and accordingly remanded the case to the district court for further proceedings. The company has petitioned this Court for review.

ARGUMENT

The decision below is correct, and there is no conflict of decisions or other reason for further review.

1. Petitioner contends that the plain language of Section 707(a) is inconsistent with Rule 8 and "compels the conclusion that the requirement takes precedence over Rule 8 in 'pattern or practice' suits" (Pet. 19–20). Although Congress may have the power to supersede the Federal Rules, unless the Congressional intent to do so is clearly stated, subsequently enacted statutes are properly construed so as to harmonize with the Rules. See 7 Moore, Federal Practice (2d ed. 1968) ¶ 86.04[4], at 4966 and cases there cited. As the court of appeals correctly noted (Pet. App. 11–12), no such intention is indicated by the language of Section 707 (a) or its legislative history.

2. Since no other court of appeals has considered this question, there is no conflict among circuits. The appellate decisions to which petitioner calls attention involve neither Section 707(a) of the Act nor the question before this Court. At the district court level, all of the courts save one (apart from the decision reversed below) which have passed on this issue have resolved it in con-

formity with the decision below.[1] We believe that the decision below will clarify any disagreement on this issue[2] which may exist at the district court level and that its consideration by this Court is not required at this time.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.

JERRIS LEONARD,
Assistant Attorney General.

SEPTEMBER 1970.

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[1] See *United States* v. *Georgia Power Co.*, 301 F. Supp. 538, 542–544 (N.D. Ga.); *United States* v. *International Brd. of Elec. Workers, Local 683*, 270 F. Supp. 233, 234–235 (S.D. Ohio); *United States* v. *Building & Constr. Trades Council*, 271 F. Supp. 147, 153 (E.D. Mo.); *United States* v. *International Brd. of Elec. Workers, Local 48*, No. C–67–575 (N.D. Ohio, Sept. 11, 1967); *United States* v. *International Brd. of Elec. Workers, Local 212*, No. 6973 (S.D. Ohio, Sept. 6, 1967); *United States* v. *Dillon Supply Co.*, No. 1973 (E.D. N.C., May 4, 1967); *United States* v. *International Ass'n of Bridge, Structural and Ornamental Ironworkers*, No. 8536 (S.D. Ohio, Feb. 28, 1968). Contra, *United States* v. *H. K. Porter Co.*, No. 67–363 (N.D. Ala., July 28, 1967) (Pet. App. 13A), appeal docketed on other grounds, No. 27,703 (C.A. 5). See also *United States* v. *St. Louis-San Francisco Railway*, No. 67–C–213(1) (E.D. Mo., Jan. 5, 1968) (Section 707(a) imposes no greater pleading requirement than Rule 8, although motion granted under Rule 12(e).)

[2] In every complaint currently filed by the United States under Section 707, the allegations are set forth with substantially the same specificity as in the complaint herein.

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